II. BOOK REVIEWS.

POMEROY'S EQUITY JURISPRUDENCE. In four volumes. By John Norton Pomeroy. Third Edition, annotated and much enlarged, and supplemented by a Treatise on Equitable Remedies, in two volumes, by John Norton Pomeroy, Jr. San Francisco: Bancroft-Whitney Company. 1905. pp. lviii, 1–859; xii, 861–1806; xv, 1807–2626; vii, 2627–3525. 8vo.

A TREATISE ON EQUITABLE REMEDIES. In two volumes. By John Norton Pomeroy, Jr. San Francisco: Bancroft-Whitney Company. 1905, 1906. pp. x, 1–932; xxvi, 950–1875. 8vo.

The first edition of this standard treatise was issued in 1881, in three volumes, and the second edition in 1892, after the death of the author, in the same number of volumes. The present edition appears in four volumes, accompanied by a new work on Equitable Remedies, by John Norton Pomeroy, Jr., in two additional volumes.

It is difficult to overestimate the importance of this work, or the effect that it has had upon the development of equity jurisprudence in this country. At the time of its appearance in 1881, few of the states had any large or consistent body of equity precedents in their reported cases. The author in his preface shows the danger, in the states adopting the code system, of the gradual loss of equitable doctrines because of the abandonment of the distinction between legal and equitable remedies, upon which so many of the equitable doctrines rest. The danger was hardly less in common law states, like Massachusetts, because an understanding of equity depends more upon the acquiring of the equitable point of view than upon the learning of any number of rules; and it was long after the belated grant of full equity jurisdiction to the courts that Massachusetts judges and lawyers learned to divest themselves of their common law ideas, and to look at equity questions from the equity standpoint. See 5 L. Quar. Rev. (1889) 370. The hopes of the author have undoubtedly been realized, and his clear and accurate statements of the principles of equity have been of the greatest service in preventing the degeneration of equity and the confusion of legal and equitable ideas in this country. The work has been cited and relied on by the courts in innumerable cases, and is certainly the greatest work on the subject ever produced.

Pomeroy's Equity Jurisprudence has a deserved reputation for accuracy and clearness in its statement of theory, and there is very little room for adverse criticism in that respect. The present writer ventures to suggest, however, that the learned author was not successful in analyzing certain equitable doctrines and in making clear their true simplicity.

The most conspicuous example of this is found in the chapter on equitable liens (§§ 1233–1267). In the class of equitable liens, so called, created by an agreement that property shall stand as security for a debt, the jurisdiction of equity is founded upon specific performance, which equity enforces because of the plain inadequacy of any legal remedy. Equity will order a sale of the property to satisfy the debt, as the only effectual means of enforcing the agreement that the property shall stand as security. This right of specific performance is, upon ordinary equity doctrines, enforceable against all subsequent owners of the property, other than innocent purchasers for value. The only difference between the right of specific performance in these cases, and the right in the case of a contract for the sale of lands, is the difference resulting from the purpose of the contract to be enforced. In the other cases treated under the head of "equitable liens," the basis of the jurisdiction is either specific performance or some other established equitable right; and the effect of such equitable right against subsequent owners of the property is simply an illustration of the general rule of equity. It is submitted that the foregoing is the full explanation of the theory, and that the reliance of the learned author upon the maxim "Equity regards as done that which ought to be done" (§ 1235) is as unnecessary as his derivation of equitable liens from the *hypotheca* of the Roman law (§ 1233, note 3) is incorrect.

In other words, what is called by the misleading term "equitable lien" is really a compound of some equitable right, usually of specific performance, to have a claim paid out of property, plus the general equity doctrine as to the enforcement of equities against volunteers or persons taking with notice. The basic equitable right should be treated under the appropriate topic, and the effect upon subsequent owners of the property should be treated under the general topic of notice or the rights of purchasers. To devote a chapter to "equitable liens," without an adequate analysis of the theory, leads the student to believe that the cases discussed in that chapter rest upon some special and even mysterious foundation, instead of being merely instances of the application of elementary rules. That the danger just pointed out is a real one, may be seen by a reference to the opinion in Hazen *v.* Matthews (184 Mass. 388), where a learned and able court was led, in considering the similar doctrine commonly called "equitable easement," to forget that the question was really one of specific performance, and to argue from the false analogy of legal easements; a fact which the court has since admitted. See *Bailey* v. *Agawam National Bank*, 76 N. E. Rep. 449 (Mass., 1906).

Perhaps the difficulty with these cases of so-called equitable liens has been partly caused by the narrow view taken by some English judges of the scope of specific performance. Lord Selborne, for example, limited the term to the enforcement of contracts for the execution of some further instrument, like a deed, which instrument is finally to define the rights of the parties. The specific enforcement of duties arising from other contracts, he said, was not properly called specific performance. See *Wolverhampton, etc., Railway Co.* v. *London, etc., Railway Co.*, L. R. 16 Eq. 433. See also *Tailby* v. *Official Receiver*, 13 App. Cas. 523. The result of a contract, not that legal security shall be given, but that certain property shall stand as security, must be explained, by a person adopting the view of Lord Selborne, upon some principle other than that of specific performance. The favorite explanation is to assume some unnamed and perhaps imperfect equitable duty to arise, then to apply the maxim "Equity regards as done that which ought to be done," and to say that the result is an equitable lien, which may be foreclosed, or, to put it more exactly, enforced, by a bill in equity. But it is submitted that this reasoning is artificial, and unnecessary for the explanation of the doctrine.

These criticisms, however, are quite debatable, and are in one sense minor criticisms, since they do not necessarily involve any difference in the practical result of the doctrine. The text is so good, and the editing so well done, that the present writer would not be understood as trying to detract from the work any of the credit to which it is so justly entitled.

The editor has been, perhaps, too conscientious in separating the author's notes from his own, and in making no material changes in the original text. That text was generally so sound and comprehensive in its statements that there has been little need of change; but the existence of two sets of notes is by no means an unmixed blessing. Other things being equal, a new law book is better than an old one brought down to date. In a new book the text is written with the latest development of the law in mind, the notes bear the proper relation to the text, and the arrangement of the page is such as to present the prominent features of the subject at first sight. In an old book which has passed through many editions the original text is retained, unless it has become absolutely wrong; and in many cases the present state of the law can be found only by examining the cases accumulated in a mass of notes by successive editors. In Pomeroy's Equity this has not become a great fault; but a revision and consolidation of the notes would, it is believed, have improved the book for use. Nowadays we use encyclopedias and general digests to find the cases which we cite to the court as authorities, and the citation of text-books as authorities is rapidly becoming obsolete. A text-book must survive, if at all, by virtue of its strength of reasoning, power of analysis, and clearness of statement, and it is submitted that no text is too sacred to be altered so as to present, in the simplest and clearest way possible, the full product of the latest discussions and investigations.

The addition of the two volumes of "Equitable Remedies," by John Norton Pomeroy, Jr., appears to be a business mistake. These volumes restate and amplify the doctrines laid down in the fourth volume of the "Equity Jurisprudence." The purchaser should not be compelled to buy the same thing twice. Either the two volumes of "Equitable Remedies" should have been published separately, or the treatment of equitable remedies contained in the fourth volume of the "Equity Jurisprudence" should have been omitted.

Despite the criticisms that have been ventured, the work remains, what it has been for twenty-five years, one of the few masterpieces of our legal literature.

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CONDITIONAL AND FUTURE INTERESTS, AND ILLEGAL CONDITIONS AND RESTRAINTS IN ILLINOIS. By Albert Martin Kales. Chicago: Callaghan and Company. 1905. pp. xliv, 753. 8vo.

The appearance of numerous and exhaustive digests and encyclopedias of general law has during the past few years driven the ordinary text-book from its place as a compendium of law or collection of decisions. It is rare, indeed, that a text-book can, like Wigmore's Evidence, compete on such lines with the encyclopedias. To this, perhaps, is due the fact that writers of text-books are turning more and more to highly specialized branches of the law and to microscopic analysis of legal principles and decisions. Kales' Future Interests is a striking example of a book of this type. The author has treated the law of future interests in Illinois from the standpoint of one who is fully as much interested in what the law should be as in the actual state of the law.

The avowed purpose of Professor Kales has been to educate the bar of Illinois to proper appreciation of Professor Gray's two works on the Rule against Perpetuities and Restraints on Alienation. Whether the book will have the hoped-for effect, to any great extent, may well be doubted. That it will be useful and used by the bar of Illinois seems, however, to be certain. The author has taken all the law of Illinois on future interests and subjected it to an exhaustive analysis, examining all the important decisions in detail and discussing many disputed or undecided questions of local law, the solution of which still lies with the Supreme Court of Illinois. As this is almost entirely new ground, and many of the questions discussed are of great importance, the discussions are exceedingly useful, particularly that concerning the extent of the landlord's right of entry on forfeiting a lease for breach of condition. See §§ 41–61. Another instance of valuable and interesting discussion appears in §§ 137–156, taking up the validity of shifting interests by deed in Illinois. In point of fact, Professor Kales' book is full of meat to the practicing lawyer, who will find many important questions skilfully briefed for use in argument.

The law of real property, however, demands, more than any other branch of the law, settled rules and decisions. It is generally more important to the lawyer who must pass in his opinion upon real estate titles that there shall be no disturbing questions concerning the title than that the law shall be a harmonious whole or that all decisions shall be correct. Professor Kales does not, perhaps, give this consideration sufficient weight. Repeatedly he argues that certain seemingly well-settled doctrines should be overthrown. The doctrine of Gebhardt *v.* Reeves (75 Ill. 301) is a case in point. It is doubtful if any Illinois lawyer would hesitate to advise a client that on the vacation of an accurate statutory dedication, the fee reverts to the dedicator or his heirs. The Supreme Court has always assumed this to be the law. See *Village of Hyde Park* v. *Borden*, 94 Ill. 26. In fact, the great number of decisions in which the Supreme Court has evaded the rule of Gebhardt *v.* Reeves all by implication admit that it is settled law. Under these circumstances it seems waste labor for Professor Kales to attack the doctrine, and although the argument is interesting enough from an academic standpoint, its usefulness may well be doubted. See §§ 4–10.

Another discussion which is also of a doubtful value is the attack on the case of Pollock *v.* Maison (41 Ill. 516). As a practical question, this case is good